THE HONOURABLE SRI JUSTICE V. ESWARAIAH

WRIT PETITION No.4360 OF 2006

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Dated: 06-03-2006

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Between

M/s. Impact Educational Trust,

Rep. by its Chairman, D.N. Sastry,

S/o. Ramaiah, R/o.12-10-587/54/A,

Sitafalmandi, Secunderabad.

...PETITIONER

AND

Municipal Corporation of Hyderabad,

Rep. by its Commissioner, Tank Bund,

Hyderabad and another.

...RESPONDENTS

ORDER:

Petitioner – Educational Trust seeks to issue a writ of mandamus to declare the notice dated 03-03-2006 in letter No.786/TPS/C5/MCH/2006 issued under Section 636 of the Hyderabad Municipal Corporations Act, 1955 (for short 'the Act') by the respondents as illegal and arbitrary.

Heard the learned counsel appearing for the petitioner as well as the learned standing counsel appearing for the respondent.

Learned counsel for the petitioner submits that the petitioner – trust purchased all that garage bearing No.C-G64 and C-G65 with undivided share of land of admeasuring 1000 Sft. in cellar portion in Block C of Shanti Shikara Apartments, Somajiguda, Hyderabad vide registered sale deed dated 12.04.1991 bearing Document No.771/1991 and a part of the said premises is leased out to about four tenants and the location of the said premises is clearly delineated in the plan annexed to the said registered sale deed. While so, the respondents without any show cause notice have issued a notice in letter No.786/TPS/C5/MCH/2006, dated 03-03-2006 under Section 636 of Hyderabad Municipal Corporation Act, 1955, stating that the petitioner has made constructions not covered by the sanctioned plan and converted parking space in cellar floor other than parking and carried out the said construction which is unauthorized and causing lot of inconvenience to the inmates in the building and also to the visitors of the building, resulting in vehicles being parked on the road, creating lot of traffic congestion, accident and public nuisance and also that the High Court in suo-motto contempt case in C.C.No.101 of 1996, dated 28-02-1996 ordered that steps be taken immediately for creation for parking areas with a view to reduce traffic congestion being created on account of cars being parked on roads for want of parking within the premises. Accordingly, the petitioner was directed to remove the said unauthorized structure within 24 hours.

I am of the opinion that issuing notice under Section 636 of the Hyderabad Municipal Corporation Act, 1955 is in respect of the buildings, which have been constructed after obtaining permission for construction of the cellar, ground floor and upper floors, the relevant provision to issue a notice is under Section 452 of the Act. If that is the case, it is for the respondents to point out whether the petitioner has converted the parking place into shops. If there is any deviation or conversion, it is for the respondents to issue a show cause notice under Section 452 of the Act. But, without issuing any show cause notice, straight away a notice under Section 636 of the Act, as if the construction has been made without any permission, has been issued directing the petitioner to remove the structures.

Having regard to the facts and circumstances of the case,
the impugned order dated 03-03-2006 in Lr.No.786/TPS/C5/MCH/2006 is directed to be treated as a show cause notice only permitting the petitioner – educational trust to file a representation/explanation within one week from the date of receipt of this order and till such

representation/explanation is considered and appropriate orders are passed and communicated to the petitioner, the respondents shall not remove or demolish the premises of the petitioner.

The writ petition is disposed of accordingly.

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V.ESWARAIAH, J

March 6, 2006

DSK